

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
TRACEY A. KENNEDY, Cal. Bar No. 150782
3 333 South Hope Street, 43rd Floor
Los Angeles, California 90071-1422
4 Telephone: 213-620-1780
Facsimile: 213-620-1398
5 tkennedy@sheppardmullin.com

6 PATRICIA M. JENG, Cal. Bar No. 272262
REANNE SWAFFORD-HARRIS, Cal. Bar No. 305558
7 Four Embarcadero Center, 17th Floor
San Francisco, California 94111-4109
8 Telephone: 415.434.9100
Facsimile: 415.434.3947
9 E mail pjeng@sheppardmullin.com
rswafford-harris@sheppardmullin.com

10 Attorneys for Defendants,
11 TESLA, INC. DBA TESLA MOTORS, INC.

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 DEMETRIC DI-AZ, OWEN DIAZ AND
LAMAR PATTERSON

16 Plaintiffs,

17 v.

18 TESLA, INC. DBA TESLA MOTORS,
19 INC., CITISTAFF SOLUTIONS, INC.;
WEST VALLEY STAFFING GROUP;
20 CHARTWELL STAFFING SERVICES,
INC.; NEXTSOURCE, INC.; and
21 DOES 1-10, inclusive

22 Defendants.

Case No. 17-cv-06748-WHO

**DEFENDANT TESLA, INC.'S
ADMINISTRATIVE MOTION TO FILE
DOCUMENTS UNDER SEAL IN SUPPORT
OF DEFENDANT'S REPLY TO
PLAINTIFFS' MEMORANDUM OF POINTS
AND AUTHORITIES IN OPPOSITION TO
TESLA, INC.'S MOTION FOR PARTIAL
SUMMARY JUDGMENT AS TO CLAIMS
FOR UNRUH CIVIL RIGHTS ACT AND
PUNITIVE DAMAGES**

23 Date: December 17, 2019
24 Time: 9:30 a.m.
Courtroom: 2, 17th Floor
25 Judge: Hon. William H. Orrick

26 Trial date; March 2, 2020
Complaint filed: October 16, 2017

27 *[Filed concurrently with the Declaration of Patricia*
28 *M. Jeng and Proposed Order]*

Pursuant to Civil Local Rules 7-11 and 79-5 of the Northern District of California, as well as Judge Orrick's Standing Order regarding administrative motions to seal, Defendant Tesla, Inc. dba Tesla Motors, Inc. ("Tesla"), submits this Administrative Motion to File Under Seal and respectfully requests that the Court issue an Order sealing the physical copies of the documents identified below to the Declaration of Patricia M. Jeng In Support of Tesla's Reply to Plaintiffs' Memorandum of Points and Authorities in Opposition to Tesla, Inc.'s Motion for Partial Summary Judgment as to the Claims for Unruh Civil Rights Act and Punitive Damages. This motion is based on the memorandum of points and authorities and the Declaration of Patricia M. Jeng In Support of the Administrative Motion to File Documents Under Seal In Support of Defendant's Motion for Partial Summary Judgment ("Jeng Decl."). Tesla identifies the following documents and portions of documents it proposes be sealed:

Document	Portion(s) To Be Sealed	Designating Party
Exhibit 25: Deposition of Owen Diaz and Deposition Exhibit 8, taken on May 22, 2018	Excerpts from Owen Diaz's May 22, 2018 deposition testimony and Deposition Exhibit 8.	Tesla, Inc.

The deposition testimony and deposition exhibit identified above were previously designated as "Confidential" pursuant to the parties' Stipulated Protective Order. Dkt. 50. Tesla requests that these documents be filed under seal because the parties have specifically stipulated the documents are confidential. Jeng Decl., ¶¶ 2-3.

TESLA'S DOCUMENTS SHOULD BE SEALED

In addition to complying with the Parties' Stipulated Protective Order, the deposition testimony and deposition exhibit are independently qualified to be protected from being filed in the public record because they provide information protected by the privacy rights of third parties granted by the California Constitution. The documents contain information that is protected by law, and thus sealable under Civil Local Rule 79-5.

The documents relate to alleged events that occurred during plaintiffs' work with Tesla which contain personnel information from and about other non-parties and Tesla employees or

1 contractors. *See* Jeng Decl., ¶¶ 3-9. The documents contain private personnel and workplace
2 information about Tesla employees and contract workers who are not parties to this litigation.

3 It is well established that California workers have a constitutional right to privacy as to
4 their private, confidential information. Cal. Const. Art. I, sec. 1. The right to privacy includes
5 confidential information contained in personnel-related documents and other personal identifying
6 information. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1137 (9th Cir. 2003)
7 (acknowledging privacy interests implicated by sensitive, personal identifying information); *see*
8 *also Lee v. Pep Boys-Manny Moe & Jack of California*, No. 12-CV-05064-JSC, 2015 WL
9 9268118, at *4 (N.D. Cal. Dec. 21, 2015) (noting that an employee's personnel records from
10 employment are subject to California's constitutional right to privacy). Additionally, sensitive and
11 private information of third parties to a litigation ordinarily should be sealed to protect the non-
12 party from improper disclosure. *See Foltz*, 331 F.3d at 1137.

13 As described above, Exhibit 25 to the Jeng Declaration should be sealed because it
14 contains personnel information and workplace information about Tesla employees and contract
15 workers who are not parties to this litigation, including information regarding complaints and
16 confidential investigations of individuals not party to this litigation. Disclosing such confidential
17 information would constitute an invasion of privacy rights of former and current employees and/or
18 contractors. Jeng Decl., ¶ 3-9.

19 Information relating to investigations of employee misconduct is properly sealed from the
20 public because releasing such information could damage or impair an employer's ability to
21 conduct investigations in the future. *See Genentech, Inc. v. JHL Biotech, Inc.*, 2019 U.S. Dist.
22 LEXIS 35177 (N.D. Cal. March 5, 2019). In *Genentech, Inc.*, the court sealed documents
23 regarding an internal investigation dealing with employee misconduct, reasoning that such
24 documents and information would reveal to the public the company's procedures and tools when
25 conducting sensitive internal investigation into suspected employee misconduct. *Id.*

26 Here, the identified deposition testimony and deposition exhibit should be filed under seal,
27 as set forth in *Genentech*.

28

1 **CONCLUSION**

2 For the reasons set forth above and based on the accompanying Declaration of Patricia M.
3 Jeng, Tesla respectfully requests that the Court grant Tesla's motion and enter an Order sealing the
4 documents identified above and in the Declaration of Patricia M. Jeng.

5
6 Dated: December 5, 2019

7 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

8
9 By /s/ Patricia M. Jeng

10 TRACEY A. KENNEDY,
11 PATRICIA M. JENG
12 REANNE SWAFFORD-HARRIS

13 Attorneys for Defendant
14 TESLA, INC. dba TESLA MOTORS, INC.
15
16
17
18
19
20
21
22
23
24
25
26
27
28